IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1982 of 2003

Ketan Dineshchandra Sarvaiya ... Petitioner

V/s

State of Maharashtra & Others ... Respondents

CORAM: V.M. KANADE, J.

DATED: MARCH 4,2005

Ms. Sonal i/b A.K. Bakshi for petitioner

Shri D.P. Adsule, A.P.P. for State

P.C. :-

. Heard the learned counsel for petitioner. The petitioner is challenging the order of issuance of process by Metropolitan Magistrate in the complaint bearing No.74/S/99 filed by complainant under section 138 of Negotiable Instruments Act. The application was made by petitioner-original accused No.5 for recalling the process on the ground that he has already resigned even before the cheque was issued. Initially, the application was made before the Metropolitan Magistrate for the recall of process. However, the said application was rejected. Thereafter revision application was made in the Session Court. The Session Court also dismissed the revision application. Thereafter the present petition has been filed.

. It is contended by learned counsel for petitioner that before issuance of cheque, the applicant had resigned on 18/3/1998 and, therefore, he is not liable for

prosecution under section 138 of Negotiable Instruments Act. The learned counsel for petitioner relies upon the reply filed by complainant to the application of discharge. In para-4 of the said reply it is stated that back-dated document might have been prepared by accused No.5 with a view to escape from his liability to face the trial in the above case.

. He submits that there is no categorical allegations that the petitioner has not resigned as a Director before the cheque was issued and, therefore, petition is liable to be allowed.

. I am unable to accept the submission made by learned counsel for petitioner. The question as to whether petitioner has in fact resigned on the said date or not. The same can be decided by the trial court only after evidence is led by both the parties.Therefore, it is not possible for me to interfer with the order of recalling the process.If the application is made by petitioner for exemption, the same may be considered on merits.

. The trial court is directed to decide the case as expeditiously as possible in any case within a period of 4 months.

. Parties to act on authenticated copy.

(V.M. Kanade, J.)